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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/809,981

03/26/2004

David R. Adaskin

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AGILENT TECHNOLOGIES INC.

INTELLECTUAL PROPERTY ADMINISTRATION,LEGAL DEPT.

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LOVELAND, CO 80537

EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

12/19/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/809,981

Applicant(s)

ADASKIN ET AL.

Examiner

Brian R. Gordon

Art Unit

1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-10, 12-17 and 21.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Brian R Gordon/
Primary Examiner, Art Unit 1797

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that selecting a frame is not equivalent to selecting a printhead. As previously stated the examiner disagrees. The claim only requires selecting at least one printhead assembly comprising a printhead. Applicant further relies upon paragraph 45 and points out "The Assembly 100 corresponds to the sum of all printheads on a writer". It should be noted that the sentence is specifically directed to a specific embodiment and more so specifically the Assembly 100. On the other hand, claim 1 is broadly directed to a printhead assembly comprising a printhead. Therefore the claimed "printhead assembly" only requires the presence of a single printhead not a sum of printheads as described in relationship to Assembly 100. There is no specific structural requirements of the claimed assembly other than a single printhead. Furthermore, there are no specific structural requirements given to define a single "printhead". Therefore any structure including a single dispensing device (such as a nozzle) may be considered equivalent to a printhead assembly as claimed. Furthermore, there is no "sum" requirement in the claims. Also it is unclear how one can have a sum of all printheads when claim 1 only requires a single printhead (dispenser). Furthermore there is no reference to a "writer" and its structural requirements in the claims. If applicant intends for the structure to be limited to the that of paragraph 45, then applicant should amend the claims to clearly reflect such.

Applicant further asserts that "best non-error dispenser" is not a "type of dispenser" as intended by applicant. As previously stated "type of dispenser" is a broad characterization. If applicant intends for the term "type" to be limited to specific characteristics, traits, or classifications, then the claim should be amended to specify those classifications applicant intends for "type" to include. As presently claimed the term "type" does not preclude "best non-error dispenser" from being a "type" of dispenser. While applicant arguments reference paragraph 50 of the specification, it should be noted that limitations in the specification not included within the claims are not read into the claim. Therefore, applicant's arguments are not commensurate in scope with that of the claims. In view of the comments of the Final Office Action and those herein above the previous art rejections are hereby maintained.

As to the amendment of claim 9, it is unclear how one can have "any of" a single printhead. If there is only one printhead present then reagent drops can only be ejected from that single printhead.